



DEC 30 2009

December 29, 2009

Floodplain Management Section
Division of Water
200 Fair Oaks Lane
Frankfort, Kentucky 40601

Re: *Water Quality Certification Permit Application*
City of Wilmore Streetscape Improvement and Pedestrian Mall Project

Dear Sir or Madam:

Enclosed is the referenced permit application with supporting documents. Also enclosed is the Water Resource and Threatened and Endangered Species Habitat Assessment for the subject project. Please contact me if you need any additional information.

Very truly yours,

Rain Storm
Biologist
rstorm@thirdrockconsultants.com

pc: Joyce Frye, KDOW (w/o enclosures)

Branch Office
511 Union Street, Suite 1850
Nashville, TN 37219
Phone: 615-313-3996

Main Office
2526 Regency Road, Suite 180
Lexington, KY 40503
Phone: 859-977-2000
www.thirdrockconsultants.com

Branch Office
403 North Court Street
Marion, IL 62959
Phone: 618-751-1048

COMMONWEALTH OF KENTUCKY
ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION
DIVISION OF WATER

APPLICATION FOR PERMIT TO CONSTRUCT ACROSS OR ALONG A STREAM
AND / OR WATER QUALITY CERTIFICATION

Chapter 151 of the Kentucky Revised Statutes requires approval from the Division of Water prior to any construction or other activity in or along a stream that could in any way obstruct flood flows or adversely impact water quality. If the project involves work in a stream, such as bank stabilization, dredging or relocation, a 401 Water Quality Certification (WQC) from the Division of Water will be required. This completed form will be forwarded to the Water Quality Branch for WQC processing. The project may not start until all necessary approvals are received from the KDOW. For questions concerning the WQC process, contact the WQC section at 502/564-3410.

If the project will disturb more than 1 acre of soil, A Notice of Intent for Storm Water Discharges will also be required. Both forms must be returned to the Floodplain Management Section of the Division of Water.

1. OWNER: City of Wilmore, Kentucky 20093A
Give name of person(s), company, governmental unit, or other owner of proposed project.
MAILING ADDRESS: 335 East Main Street
Wilmore, Kentucky 4039
TELEPHONE #: (859) 858-4411 EMAIL: dcarlstedt@wilmore.org
2. AGENT: David Carlstedt, Director of Utilities and Public Works
Give name of person(s) submitting application, if other than owner.
ADDRESS: 335 East Main Street
Wilmore, Kentucky 4039
TELEPHONE #: (859) 858-4411 EMAIL: dcarlstedt@wilmore.org
3. ENGINEER: Jerry Leslie P.E. NUMBER: KY#19354
Contact Division of Water if waiver can be granted.
TELEPHONE #: (859)224-4476 EMAIL: jleslie@hwlochner.com
4. DESCRIPTION OF CONSTRUCTION: City of Wilmore Streetscape Improvement and Pedestrian Mall Project:
List the items to be constructed in the floodplain
This project consists of the widening of East College Street (KY 3433) and North Walnut Street and the restriping of North Lexington Avenue (KY 29) to provide bike lanes; new sidewalks on College and Walnut; conversion of the one-way portion of Gillispie Street to a pedestrian mall; multi-use path construction from College to Morrison; stream relocation and multi-use path construction; parking lot construction; enhanced streetscape, lighting , and signing.
5. COUNTY: Jessamine NEAREST COMMUNITY: Wilmore
6. USGS QUAD NAME Wilmore LATITUDE/LONGITUDE: Lat. 37.863°, Long. -84.659°
7. STREAM NAME: unnamed tributary of Jessamine Creek WATERSHED SIZE (in acres): 188 ac
8. LINEAR FEET OF STREAM IMPACTED: 385'
9. DIRECTIONS TO SITE: The project area is located in Wilmore, southeast of the intersection of East College Street and South Lexington Avenue at North Walnut Street. From US-68 south, continue on Lexington Road (becomes N. Lexington Ave) for approximately 2 miles to Wilmore, turn left at East College Street, and then turn right at North Walnut Street.
10. IS ANY PORTION OF THE REQUESTED PROJECT NOW COMPLETE? ☐ Yes ☒ No If yes, identify the completed portion on the drawings you submit and indicate the date activity was completed. DATE: _____
11. ESTIMATED BEGIN CONSTRUCTION DATE: Spring 2010
12. ESTIMATED END CONSTRUCTION DATE: Winter 2010

13. HAS A PERMIT BEEN RECEIVED FROM THE US ARMY, CORPS of ENGINEERS? ☒ Yes ☐ No If yes, attach a copy of that permit. Attached – USACE letter of verification that project is authorized by NWP NO. 39
14. THE APPLICANT **MUST** ADDRESS PUBLIC NOTICE:

(a) PUBLIC NOTICE HAS BEEN GIVEN FOR THIS PROPOSAL BY THE FOLLOWING MEANS:

- ____ Public notice in newspaper having greatest circulation in area (provide newspaper clipping or affidavit)
____ Adjacent property owner(s) affidavits (Contact Division of Water for requirements.)

(b) X I REQUEST WAIVER OF PUBLIC NOTICE BECAUSE:

Two public meetings have been held for this project. Each was advertised multiple times in local papers (Wilmore Newsletter and the Jessamine Journal)

Contact Division of Water for requirements.

15. I HAVE CONTACTED THE FOLLOWING CITY OR COUNTY OFFICIALS CONCERNING THIS PROJECT:

Harold Rainwater (mayor) and the Wilmore City Council.

Give name and title of person(s) contacted and provide copy of any approval city or county may have issued.

16. LIST OF ATTACHMENTS:

____ List plans, profiles, or other drawings and data submitted. Attach a copy of a 7.5 minute USGS topographic map clearly showing the project location.

Project Location - topo

Plan sheets – North Walnut Street and Gillispe Street Plan, 2 pages

Plan sheet enlargement of stream impact area

17. I, David Carlstedt (owners Initials) CERTIFY THAT THE OWNER OWNS OR HAS EASEMENT RIGHTS ON ALL PROPERTY ON WHICH THIS PROJECT WILL BE LOCATED OR ON WHICH RELATED CONSTRUCTION WILL OCCUR (for dams, this includes the area that would be impounded during the design flood).

18. REMARKS:

Stream mitigation for impacts to 385 feet of impaired intermittent stream will in be the form of an in-lieu fee payment (\$46,200) to the Kentucky Department of Fish and Wildlife Resources Stream and Wetland Restoration Fund.

I hereby request approval for construction across or along a stream as described in this application and any accompanying documents. To the best of my knowledge, all the information provided is true and correct.

SIGNATURE: David Carlstedt

Owner or Agent sign here. (If signed by Agent, a Power of Attorney should be attached.)

DATE: 12/16/09

SIGNATURE OF LOCAL FLOODPLAIN COORDINATOR:

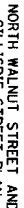
Betty L. Taylor

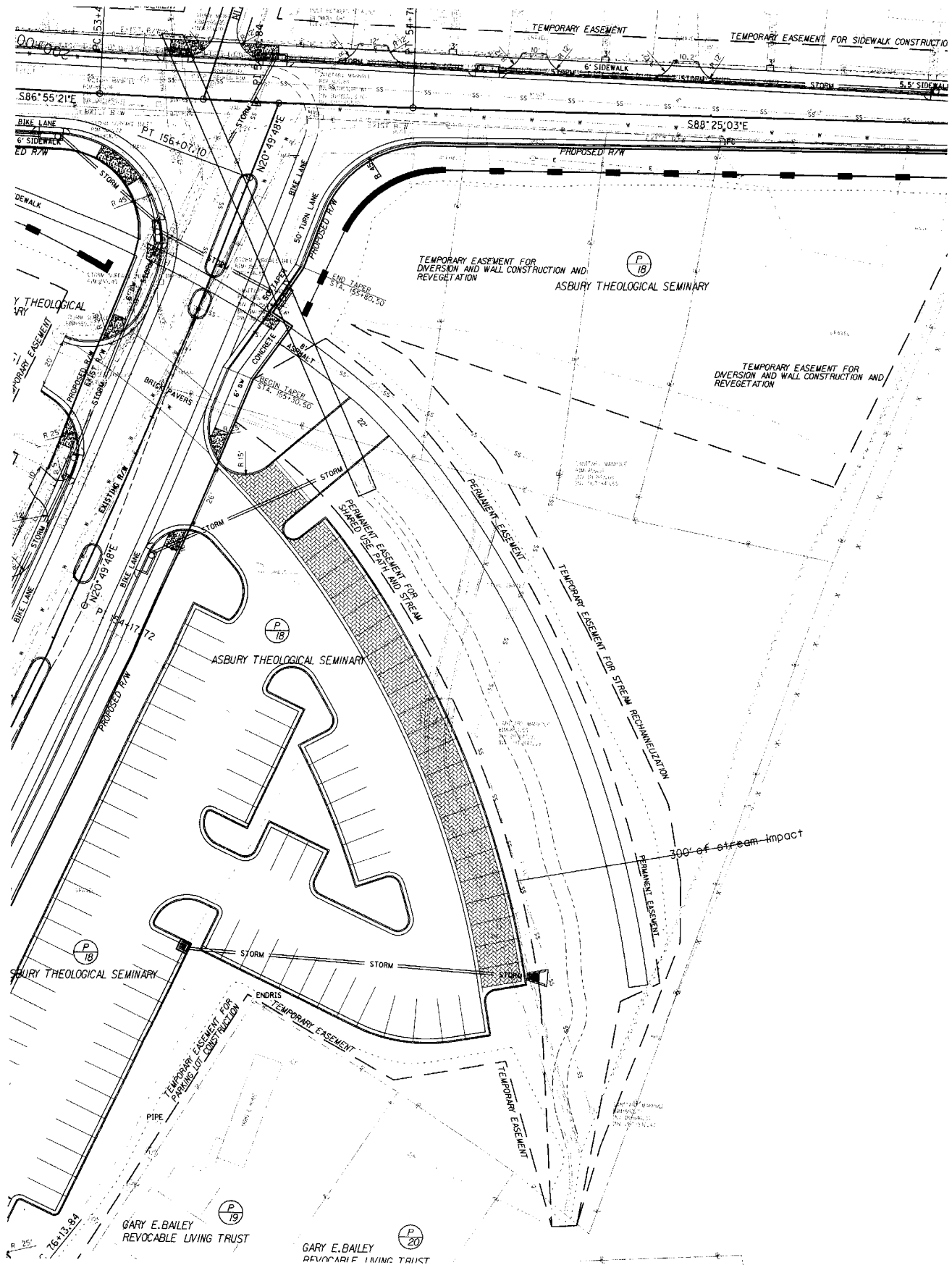
Permit application will be returned to applicant if not properly endorsed by the local floodplain coordinator.

DATE: 12-22-09

SUBMIT APPLICATION AND ATTACHMENTS TO:

Floodplain Management Section
Division of Water
200 Fair Oaks Lane
Frankfort, KY 40601





DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE
CORPS OF ENGINEERS
P.O. BOX 59
LOUISVILLE, KENTUCKY 40201-0059
FAX: (502) 315-6677
January 16, 2009

Operations Division
Regulatory Branch (South)
ID No. LRL-2008-1449-let

Mr. Michael Galbraith
H.W. Lochner, Inc.
1040 Monarch Street, Suite 300
Lexington, Kentucky 40513-1820

Dear Mr. Galbraith:

This is in response to your request, on behalf of the Kentucky Transportation Cabinet, for authorization to impact 385 linear feet (0.04 acre) of an unnamed, intermittent tributary to Jessamine Creek for the Wilmore Streetscape and Pedestrian Mall Improvements in Jessamine County, Kentucky. The information supplied by you was reviewed to determine whether a Department of the Army (DA) permit will be required under the provisions of Section 404 of the Clean Water Act.

Your project is considered a discharge of backfill or dredge material for the construction or expansion of commercial and institutional developments. The project is authorized under the provisions of 33 CFR 330 Nationwide Permit (NWP) No. 39, Commercial and Institutional Developments, as published in the Federal Register March 12, 2007. Under the provisions of this authorization you must comply with the enclosed:

1. Terms for Nationwide Permit No. 39;
2. Nationwide Permit General Conditions; and
3. Water Quality Certification (WQC) Conditions for Nationwide Permit No. 39 dated March 19, 2007, issued by the Kentucky Division of Water (KDOW). If under these conditions, you must obtain individual WQC.

The Kentucky Transportation Cabinet must also comply with the following Special Conditions:

4. A copy of the receipt documenting the payment of \$46,200 to the Kentucky Department of Fish and Wildlife Resources Stream and Wetland Restoration Fund shall be provided to the Corps prior to any filling of "waters of the U.S.".

Once you obtain your certification, or if no application was required, you may proceed with the project without further contact or verification from us.

This decision is valid for 2 years from the date of this letter. The enclosed Compliance Certification should be signed and returned when the project is completed. If your project is not completed within this 2-year period or if your project is modified, you must contact us for another permit determination. A copy of this letter is being sent to the applicant and to the Kentucky Division of Water.

Attached to this verification that your project is authorized by NWP No. 39 are a preliminary jurisdictional determination (JD), a Notification of Appeal Process (NAP) fact sheet, and Request for Appeal (RFA) form. However, a preliminary jurisdictional determination is not appealable and impacting "waters of the U.S." identified in the preliminary JD will result in you waiving your right to request an approved JD at a later date. You may request an approved JD (which may be appealed), by contacting me for further instruction.

If you have any questions, please contact this office by writing to the above address, ATTN: CELRL-OP-FS, or by calling me at (502) 315-6689. All correspondence pertaining to this matter should refer to our ID No. LRL-2008-1449-1et.

Sincerely,

Original Signed

Layna Thrush
Project Manager, South
Regulatory Branch

Enclosures

Water Resource and Threatened and Endangered Species Habitat Assessment

Wilmore Pedestrian Mall and Streetscape Design Jessamine County, Kentucky

Prepared for
H.W. Lochner, Inc.
1040 Monarch Street, Suite 300
Lexington, KY 40513

December 3, 2008

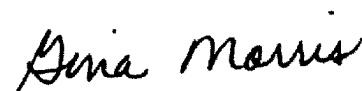
Prepared by
Third Rock Consultants, LLC
2526 Regency Road, Suite 180
Lexington, KY 40503
859.977.2000

Prepared by:



Rain Storm

Reviewed by:



Gina Morris



www.thirdrockconsultants.com

Environmental Analysis & Restoration

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Water Resource and Threatened and Endangered Species Habitat Assessment
Wilmore Pedestrian Mall and Streetscape Design, Jessamine County, Kentucky

I. INTRODUCTION

Third Rock Consultants, LLC (Third Rock) conducted a water resource assessment and determined the presence of habitat for federally threatened and endangered species at the request of H.W. Lochner, Inc. (Lochner) for a proposed pedestrian mall and streetscape design for the City of Wilmore, in Jessamine County, Kentucky.

Stream channels were determined based on the presence of a defined bed and bank and evidence of at least periodic flows. Fieldwork was conducted to determine the quality of streams that will be impacted by the proposed project in order to prepare applications for Section 401 WQC and Section 404 permits and to determine stream mitigation requirements.

Wetland was determined by following procedures outlined in the U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual (1987). The terrestrial ecosystem field survey evaluated faunal and floral components in the proposed project corridor as they relate to threatened and endangered species. Species of concern for Jessamine County include federally endangered running buffalo clover (*Trifolium stoloniferum*), gray bat (*Myotis grisescens*), and Indiana bat (*Myotis sodalis*).

Third Rock has completed Sections L and M of the CE Checklist to document conditions for Threatened and Endangered Species and Water Resource Impacts.

II. METHODS

Topographic mapping and aerial photographs were reviewed to identify areas of concern prior to visiting the site. Third Rock biologists conducted a field visit on November 21, 2008. Stream type determinations (perennial, intermittent, or ephemeral) were made at each impacted stream. Photos of each stream were taken and Rapid Bioassessment Field Data

Sheet (RBP) scores were assigned to representative stream reaches.

The entire project area was searched for wetlands as well as potential habitat for endangered species. Trees within the project area were examined for Indiana bat summer roost habitat, including exfoliating bark, broken limbs, cracks, and/or crevices. A search for karst features, such as caves or sinkholes that could provide gray bat or Indiana bat habitat was conducted. The project area was examined for streams with wooded banks or open water wetlands that could provide foraging habitat for gray bats. Wooded or partially wooded areas, as well as wooded fencerows were examined for potential running buffalo clover habitat.

Stream RBP sheets, Jurisdictional Determination forms, and photographs are contained in Appendix A and B, respectively, and locations are shown on Exhibits 1 and 2, pages 2 and 3.

III. RESULTS

A. Streams

A single channelized and degraded stream, 385 feet long, bisects the project area (Exhibits 1 and 2, pages 2 and 3). This stream is indicated as a solid blue line on the USGS topographic map. During the November 21, 2008 field effort the stream was not flowing; water was present as a standing pool. It was determined that this stream is classified as intermittent. The total RBP score for this stream is 62, which is considered "poor." The stream is contained within a heavily shored and entrenched channel, the walls of which are constructed of concrete and block. The top of the banks of this channelized stream is mowed grass.

For the purposes of this assessment the channel is described in two reaches. Reach 1 (117 feet), the most upstream portion within the project area, has a flat concrete and grass bottom, with

If removal of these trees is necessary, it should be conducted when Indiana bats are not using their summer habitats, between October 15 and March 31, in order to avoid impacts to Indiana bat. If these tree clearing restrictions are not possible, the United States Fish and Wildlife Service (USFWS) may require a Biological Assessment (BA) to be conducted.

IV. STREAM MITIGATION

It is anticipated that the City of Wilmore will request that the stream be enclosed in a culvert for the entire length of the project area (385 feet). The information gathered during the field survey was used to complete the Summary of Stream Impacts Table, located in Appendix C. Because the stream impact is greater than 300 feet, the USACE and the Kentucky Division of Water may require stream mitigation in order to approve the Section 404 and Section 401 WQC permits. The stream mitigation ratio calculated for this poor quality stream is 1.0. Based on this mitigation ratio, the in-lieu fee amount for impacts to 385 feet of stream is \$46,200.

V. CONCLUSION

One aquatic resource, a degraded intermittent stream, is located in the project area. Mitigation costs for placing this entire stream length (385 feet) in a culvert is \$46,200.

Habitat for one federally endangered species, the Indiana bat, is present in three locations within the project area. If removal of these trees is necessary, it should be conducted when Indiana bats are not using their summer habitats, between October 15 and March 31, in order to avoid impacts. Coordination with USFWS will be required.

APPENDICES

**APPENDIX A – RAPID BIOASSESSMENT PROTOCOL FIELD DATA SHEET AND
JURISDICTIONAL DETERMINATION FORM**

HABITAT ASSESSMENT FIELD DATA SHEET — HIGH GRADIENT STREAMS (FRONT)

STREAM NAME: Unnamed Tributary to Jessamine Creek										LOCATION: Pedestrian Mall in Wilmore; Adjacent to Seminary														
STREAM WDTN (FT): 2.5-4					DEPTH (FT): 1.5-4					PERENNIAL <input type="checkbox"/>					INTERMITTENT <input checked="" type="checkbox"/>					EPHEMERAL <input type="checkbox"/>				
STATION #:					RIVERMILE:					COUNTY: Jessamine					STATE: KY									
LAT: 37.863°					LONG: -84.659°					RIVER BASIN: Kentucky														
CLIENT: H.W. Lochner										PROJECT NO. 8139-08														
INVESTIGATORS/CREW: R. Storm, C. Bloyd																								
FORM COMPLETED BY: R. Storm										DATE: November 21, 2008					REASON FOR SURVEY: Stream Assessment and Permit Application									
										TIME: 10:00 a.m.														

Parameters to be evaluated in sampling reach	Habitat Parameter	Condition Category																				
		Optimal					Suboptimal					Marginal					Poor					
	1. Epifaunal Substrate/ Available Cover	Greater than 70% of substrate favorable for epifaunal colonization and fish cover; mix of snags, submerged logs, undercut banks, cobble or other stable habitat and at stage to allow full colonization potential (i.e., logs/snags that are <u>not</u> new fall and <u>not</u> transient.					40-70% mix of stable habitat; well suited for full colonization potential; adequate habitat for maintenance of populations; presence of additional substrate in the form of newfall, but not yet prepared for colonization (may rate at high end of scale).					20-40% mix of stable habitat; habitat availability less than desirable; substrate frequently disturbed or removed.					Less than 20% stable habitat; lack of habitat is obvious; substrate unstable or lacking.					
		SCORE: 5	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
	2. Embeddedness	Gravel, cobble, and boulder particles are 0-25% surrounded by fine sediment. Layering of cobble provides diversity of niche space.					Gravel, cobble, and boulder particles are 25-50% surrounded by fine sediment.					Gravel, cobble, and boulder particles are 50-75% surrounded by fine sediment.					Gravel, cobble, and boulder particles are more than 75% surrounded by fine sediment.					
		SCORE: 9	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
	3. Velocity/Depth Regime	All four velocity/depth regimes present (slow-deep, slow-shallow, fast-deep, fast-shallow). (Slow is < 0.3 m/s, deep is > 0.5 m.)					Only 3 of the 4 regimes present (if fast-shallow is missing, score lower than if missing other regimes).					Only 2 of the 4 habitat regimes present (if fast-shallow or slow-shallow are missing, score low).					Dominated by 1 velocity/depth regime (usually slow-deep).					
		SCORE: 4	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
	4. Sediment Deposition	Little or no enlargement of islands or point bars and less than 5% of the bottom affected by sediment deposition.					Some new increase in bar formation, mostly from gravel, sand or fine sediment; 5-30% of the bottom affected; slight deposition in pools.					Moderate deposition of new gravel, sand or fine sediment on old and new bars; 30-50% of the bottom affected; sediment deposits at obstructions, constrictions, and bends; moderate deposition of pools prevalent.					Heavy deposits of fine material, increased bar development; more than 50% of the bottom changing frequently; pools almost absent due to substantial sediment deposition.					
		SCORE: 14	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1
5. Channel Flow Status	Water reaches base of both lower banks, and minimal amount of channel substrate is exposed.					Water fills > 75% of the available channel; or <25% of channel substrate is exposed.					Water fills 25-75% of the available channel, and/or riffle substrates are mostly exposed.					Very little water in channel and mostly present as standing pools.						
	SCORE: 1	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1	0

HABITAT ASSESSMENT FIELD DATA SHEET — HIGH GRADIENT STREAMS (BACK)

Habitat Parameter	Condition Category																				
	Optimal					Suboptimal					Marginal					Poor					
6. Channel Alteration	Channelization or dredging absent or minimal; stream with normal pattern.					Some channelization present, usually in areas of bridge abutments; evidence of past channelization, i.e., dredging, (greater than past 20 yr) may be present, but recent channelization is not present.					Channelization may be extensive; embankments or shoring structures present on both banks; and 40 to 80% of stream reach channelized and disrupted.					Banks shored with gabion or cement; over 80% of the stream reach channelized and disrupted. Instream habitat greatly altered or removed entirely.					
SCORE: 1	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1	0
7. Frequency of Riffles (or bends)	Occurrence of riffles relatively frequent; ratio of distance between riffles divided by width of the stream < 7:1 (generally 5 to 7); variety of habitat is key. In streams where riffles are continuous, placement of boulders or other large, natural obstruction is important.					Occurrence of riffles infrequent; distance between riffles divided by the width of the stream is between 7 to 15.					Occasional riffle or bend; bottom contours provide some habitat; distance between riffles divided by the width of the stream is between 15 to 25.					Generally all flat water or shallow riffles; poor habitat; distance between riffles divided by the width of the stream is a ration of > 25.					
SCORE: 6	20	19	18	17	16	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1	0
8. Bank Stability (score each bank) Note: determine left or right side by facing downstream.	Banks stable; evidence of erosion or bank failure absent or minimal; little potential for future problems. < 5% of bank affected.					Moderately stable; infrequent, small areas of erosion mostly healed over. 5-30% of bank in reach has areas of erosion.					Moderately unstable; 30-60% of bank in reach has areas of erosion; high erosion potential during floods.					Unstable; many eroded areas; "raw" areas frequent along straight sections and bends; obvious bank sloughing; 60-100% of bank has erosional scars.					
SCORE: 9 (LB)	Left Bank	10	9			8	7	6			5	4	3			2	1	0			
SCORE: 9 (RB)	Right Bank	10	9			8	7	6			5	4	3			2	1	0			
9. Vegetative Protection (score each bank)	More than 90% of the streambank surfaces and immediate riparian zone covered by native vegetation, including trees, understory shrubs, or non-woody macrophytes; vegetative disruption through grazing or mowing minimal or not evident; almost all plants allowed to grow naturally.					70-90% of the streambank surfaces covered by native vegetation, but one class of plants is not well-represented; disruption evident but not affecting full plant growth potential to any great extent; more than one-half of the potential plant stubble height remaining.					50-70% of the streambank surfaces covered by vegetation; disruption obvious; patches of bare soil or closely cropped vegetation common; less than one-half of the potential plant stubble height remaining.					Less than 50% of the streambank surfaces covered by vegetation; disruption of streambank vegetation is very high; vegetation has been removed to 5 centimeters or less in average stubble height.					
SCORE: 1 (LB)	Left Bank	10	9			8	7	6			5	4	3			2	1	0			
SCORE: 1 (RB)	Right Bank	10	9			8	7	6			5	4	3			2	1	0			
10. Riparian Vegetative Zone Width (score each bank riparian zone)	Width of riparian zone >18 meters; human activities (i.e., parking lots, roadbeds, clear-cuts, lawns, or crops) have not impacted zone.					Width of riparian zone 12-18 meters; human activities have impacted zone only minimally.					Width of riparian zone 6-12 meters; human activities have impacted zone a great deal.					Width of riparian zone <6 meters: little or no riparian vegetation due to human activities.					
SCORE: 1 (LB)	Left Bank	10	9			8	7	6			5	4	3			2	1	0			
SCORE: 1 (RB)	Right Bank	10	9			8	7	6			5	4	3			2	1	0			

TOTAL SCORE: 62

ATTACHMENT

PRELIMINARY JURISDICTIONAL DETERMINATION FORM --

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): November 25, 2008

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:
Rain Storm, Third Rock Consultants, LLC, 2526 Regency Road, Suite 180,
Lexington, KY, 40503 on behalf of H.W. Lochner, Inc.

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Louisville

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: The proposed impacts are associated with the proposed Wilmore Pedestrian Mall and Streetscape Design. The project area is located in Wilmore, southeast of the intersection of East College Street and South Lexington Avenue at North Walnut Street.

(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES AT DIFFERENT SITES)

State: Kentucky County/parish/borough: Jessamine City: Wilmore
Center coordinates of site (lat/long in degree decimal format): Lat. 37.863 °,
Long. -84.659°

Universal Transverse Mercator:

Name of nearest waterbody: Jessamine Creek

Identify (estimate) amount of waters in the review area:

Non-wetland waters: 385 linear feet: width (ft) and/or 0.018 acres.

Cowardin Class: Riverine

Stream Flow: Intermittent

Wetlands: acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10 waters:

Tidal:

Non-Tidal:

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☐ Office (Desk) Determination. Date:

☒ Field Determination. Date(s): November 25, 2008

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

- ☐ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant. **RFP Wetland Determination field data sheets**
- ☐ Office concurs with data sheets/delineation report.
- ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
- ☐ Corps navigable waters' study: .
- ☐ U.S. Geological Survey Hydrologic Atlas: .
- ☐ USGS NHD data.
- ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: **7.5 minute Wilmore.**
- ☐ USDA Natural Resources Conservation Service Soil Survey. Citation:
- ☐ National wetlands inventory map(s). Cite name:.
- ☐ State/Local wetland inventory map(s): .
- ☐ FEMA/FIRM maps: .
- ☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): provided by Lochner, 2008.
or ☒ Other (Name & Date): **Photo log prepared by Third Rock from November 2008 field visit.**
- ☐ Previous determination(s). File no. and date of response letter: .
- ☐ Other information (please specify): .

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and date of
Regulatory Project Manager
(REQUIRED)

Signature and date of
person requesting preliminary JD
(REQUIRED, unless obtaining
the signature is impracticable)

Site	Latitude	Longitude	Cowardin Class	Estimated amount of aquatic resource in review area	Class of aquatic resource
S 1-unnamed tributary of Jessamine Creek	37.863	-84.659	Riverine, Streambed	385 feet	Intermittent Stream

APPENDIX B – PHOTO JOURNAL

APPENDIX C – SUMMARY OF STREAM IMPACTS

Summary of Stream Impacts

Stream	Type	Presence of Riffle Pool Sequence	RBP Score	Quality Impact	Stream Width (ft)	Length of Stream (ft)	Area Watershed (acre)	Size (acre)	HUC 14	DOW Mitigation Required?	USACE Permit Type	USACE Mitigation Required?	Mitigation Ratio	Stream Debits	Total Cost	Reason	
Stream 1	Intermittent	Yes	62	Poor	Culvert	4	385	0.035	188	05100205130030	Yes	NW 39	Yes	1.00	385.00	46,200	More than 300 feet impacted....mitigation required